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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/994,732      | 11/28/2001  | J. Mitchell Shnier   |                     | 8327             |

7590 05/13/2005

Mitchell Shnier  
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Toronto, ON 416 222-0641  
CANADA

EXAMINER

HUTTON JR, WILLIAM D

| ART UNIT | PAPER NUMBER |
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2179

DATE MAILED: 05/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

47

## Notice of Allowability

Application No.

09/994,732

Examiner

Doug Hutton

Applicant(s)

SHNIER, J. MITCHELL

Art Unit

2179

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Applicant's Response dated 25 March 2005.
2. ☒ The allowed claim(s) is/are 39-44.
3. ☒ The drawings filed on 28 November 2001 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☒ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

- |   |  |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                    |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance   |
|   | 9. <input type="checkbox"/> Other _____.   |

### EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mitchell Shnier on 5 May 2005.

The application has been amended as follows:

*In the Claims:*

39. (currently amended) A method for creating and playing a customized program while connected to a data communications network, comprising:

- a) ~~providing~~ storing media references in a storage means ~~which is also~~ connected to said data communications network, each media reference providing descriptive information and an address to locate ~~the~~ corresponding media content ~~which is provided by~~ on media servers ~~which are also~~ connected to said data communications network, said media servers comprising:
- ~~b) said media servers selected from the group consisting of;~~
  - means to store ~~archived media segments~~, ~~said means here called~~ ~~archived media servers~~, ~~said~~ archived media segments each having

predetermined durations and received through a media stream which for each a user can be started at an arbitrary offset from the beginning of a one of the archived media segments and said media stream can be paused and resumed as desired by each said user, ~~and~~ and/or

- means to produce a continuously-playing ~~live broadcast media stream~~, ~~said means here called live broadcast media servers~~, said live broadcast media stream ~~being~~ that is simultaneously broadcast to any number of users and therefore cannot be paused or controlled by individual users,

b) providing means for a plurality of users to create and store their own customized programs, including:-

- means for each user connected to said data communications network to examine the media references stored ~~by~~ in said media reference storage means,
- means for each user to build and store onto a shared schedule server their own customized program by selecting the media references for the desired archived media segments and live broadcast media streams, and by specifying a start time or sequence position for each desired archived media segment and/or live broadcast media stream and a maximum play duration for each desired archived media segment and/or live broadcast media stream,

c) providing means for receiving and playing a plurality of media streams ~~receiving and playing means~~, each including:-

- means to enable a said users to uniquely identify themselves to said shared schedule server,
- means for said shared schedule server to select each said uniquely identified user's said stored customized program,
- means to receive and play the media streams for each said user, according to said selected stored customized program,
- means to interrupt the playing of a first media stream with a second media stream if said second media stream is scheduled to start before the playing of said first media stream has completed, ~~as well as~~ and means to automatically resume playing said interrupted first media stream when the playing of said interrupting second media stream is completed,

whereby a each said user's customized program can include predetermined start times and maximum play durations of both the continuously-playing live broadcast streaming media ~~as well as~~ and the archived media segments, so that the receiving of the customized program can be entirely automatic and not require manual intervention to start, stop, or resume any type of media, and

whereby a said users can access their customized programs and immediately receive and simultaneously play their corresponding media streams using any media stream receiving and playing means connected to said data communications network without the need for advance downloads of media content.

40. (currently amended) A method as claimed in claim 4 39, wherein, when automatically resuming play of an interrupted archived media segment, the offset used ~~will be~~ begins earlier in said media segment than when said interruption occurred, whereby an interrupted word or sentence can be heard in its entirety.

41. (currently amended) A method as claimed in claim 4 39, wherein a repeat interval can be specified for said selected media references used to build said customized program, whereby a single entry in said customized program can result in the playing of the corresponding media stream only at predetermined intervals and for predetermined durations, even for continuously-playing live broadcast media streams.

42. (currently amended) A method as claimed in claim 4 39, wherein said shared schedule server includes means to maintain a record of which of the archived media segments each said user has played along with the offsets to which partially-played media segments have been played, whereby a each said user can stop receiving a partially-played archived media segment and later, from the same or a different media stream receiving and playing means, automatically resume receiving said partially-played archived media segment.

43. (currently amended) A method as claimed in claim 4 39, wherein each said user can store a plurality of said customized programs, ~~each~~ said customized programs assigned specific times-of-day and days-of-week when they will be automatically

utilized, whereby a each said user can create customized programs suitable for different times of the day, or days of the week, and automatically receive these at the appropriate assigned times.

44. (currently amended) A method as claimed in claim 4 39, wherein said users can store a plurality of said customized programs, ~~each~~ said customized programs available for said users to manually select when playing their media streams.

***Allowable Subject Matter***

Claims 39-44 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

***Claim 39:***

The closest prior art is Logan (US 6,199,076). Logan discloses an audio program player system that automatically plays a predetermined schedule of audio program segments. Initially, the schedule is automatically created by a server subsystem. Subsequently, the system presents the schedule to the user and allows the user to

amend the program selections and the order of the selections. The system also allows a listener to skip forward or backward through the schedule during play of the selections to listen to a different selection. The system allows a user to manually interrupt and restart the scheduled selections. Finally, in the background of the Invention, Logan discloses Internet radio making audio program files available for downloading and replaying in real time.

Logan fails to disclose or suggest a method for creating and playing a customized program that comprises the following combination of features recited in the claim:

- scheduling continuously-playing live broadcast streaming media to be automatically played at a certain time by a media player;
- specifying a maximum play duration for said continuously-playing live broadcast streaming media;
- scheduling archived media segments having predetermine durations, wherein each said segment can be started at an arbitrary offset from the beginning of each said segment;
- interrupting the playing of a first media stream with a second media stream if the second media stream is scheduled to begin before the first media stream has finished playing, and automatically resuming play of the first media stream when the second media stream has finished playing; and
- scheduling predetermined start times and maximum play durations of both the continuously-playing live broadcast streaming media and the archived media



segments, so that the customized program is entirely automatic and does not require manual intervention to start, stop or resume any type of media.

Accordingly, the subject matter of Claim 39 is allowable.

*Claims 40-44:*


These claims are dependent upon Claim 39 and thus include allowable subject matter.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Doug Hutton whose telephone number is (571) 272-4137. The examiner can normally be reached on Monday-Friday from 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Herndon, can be reached at (571) 272-4136. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2100.

WDH  
May 5, 2005

  
HEATHER R. HERNDON  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100